

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ERIC LYONS,  
Plaintiff

v.

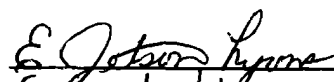
LT. JOSEPH EMERICK; CAPT. JAMES  
SKINDALL; DET. G. MCSHANE; DET.  
T. McLAUGHLIN; OFCR. DIBELLA;  
AGENT SHAWN VAN SLYKE; GEORGE  
WELLSBY; and CATHY LEOPOLD;  
Defendants

C.A. NO. 03-75 Erie  
District Judge McLaughlin  
Magistrate Judge Baxter

RESUBMITTED NOTICE OF APPEAL

AND NOW, comes the Plaintiff in the above matter and files this Resubmitted Notice of Appeal Pursuant to Federal Rules of Appellate Procedure. Plaintiff had filed/submitted a timely Notice of Appeal on December 12, 2005, following closure of the case in lower court by Memorandum Order dated November 15, 2005, thereby giving the notice to a correctional officer to mail. The Notice of Appeal had not been received by the Court and this Notice is filed as result with attached Affidavit and Certificate of Service.

Respectfully Submitted,

  
Eric J. Lyons EX1121  
50 Overlook Drive  
LaBelle, PA 15450

January 10, 2006

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ERIC LYONS,  
Plaintiff

v.

LT. JOSEPH EMERICK, et al.,  
Defendants

CA No. 03-75Eric

AFFIDAVIT OF ERIC LYONS

I, Eric LYONS, being the Plaintiff in the above matter and being confined at the State Correctional Institution at Fayette County, Pennsylvania, hereby states under the Penalties of Perjury that the following statements are true and correct to the best of my knowledge.

1. On December 12, 2005, I had completed a timely Notice of Appeal and Certificate of Service in the interest of the above captioned case Pursuant to Fed. R. APP. P.

2. The Notice of Appeal was being duly filed following the Memorandum Order filed by District Court Judge McLaughlin on November 15, 2005.

3. On December 12, 2005, or there about, I did so Place in the hand of a Correction officer the Original Notice of Appeal and Certificate of Service sealed in an envelope to be Placed in the institution mail box for mailing to the Clerk of Courts.

4. In addition, on December 12, 2005, or thereabout, I did so Place in the hand of a correction officer COPIES of the Notice of Appeal and Certificate of Service Sealed inside individual envelopes and to be Placed in the institution mail box for mailing

to Megan Farrell, Esq., Gerald Vilella, Esq., Bryan Fife, Esq., and George Wellsby, respectively and whom are all Parties related to the case.

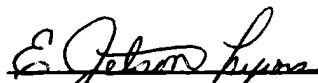
5. After not receiving a response from the Clerk of Courts in the Western District of Erie, County, or the United States Court of Appeals for the Third Circuit indicating receipt and docketing of the Notice, I had inquired of the matter to the Clerk of Courts via letter dated January 3, 2006.

6. On January 10, 2006, I had received answer that "no appeal notice appears on the docket sheet."

7. I do not know what became of that Notice after it had been placed in the officer's hand for mailing. A timely filing had been made and all Parties of record were served accordingly.

8. Hence, considering the circumstance beyond my control in which the Court did not receive its copy, I request leave to resubmit the Notice of Appeal before the Court. An appropriate Certificate of Service is attached.

Pursuant to 28 U.S.C. § 1746, I do hereby affirm under Penalties of Perjury that the foregoing statements are true and correct to the best of my knowledge. Executed on this 10th day of January 2006, at the State Correctional Institution at Fayette County, Pennsylvania.

  
Eric J. Lyons, EX1127  
50 Overlook Drive  
LaBelle, PA 15450

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ERIC LYONS,  
Plaintiff

v.

LT. JOSEPH EMERICK; CAPT. JAMES  
SKINDELL; DET. G. MCSHANE; DET.  
T. MCLAUGHLIN; OFCR. DIBELLO;  
AGENTS SHAWN VAN SLYKE; GEORGE  
WELLSBY; and CATHY LEOPOLD,  
Defendants

C.A. NO. 03-75 Erie  
District Judge McLaughlin  
Magistrate Judge Baxter

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I have served a true and correct copy of the within Resubmitted Notice of Appeal upon the following via first class mail on January 11, 2006; Affidavit is attached:

Ms. Megan Ferrall, ESQ.  
700 Grant Street, Ste. 400  
Pittsburgh, PA 15219

Mr. Gerald Villella, ESQ.  
900 State St., Ste. 310  
Erie, PA 16501

Mr. Bryan Fife, ESQ.  
2527 West 26th St.  
Erie, PA 16506

Mr. George Wellsby  
1177 East Gore Rd.  
Erie, PA 16504

*E. J. Lyons*  
Eric J. Lyons  
50 Overlook Dr., Ex 1127  
LaBelle, PA 15450

January 11, 2006

Clerk of Courts  
U.S. District Court  
P.O. Box 1820  
Erie, PA 16507

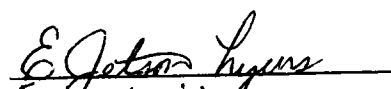
Re: Lyons v. Emerick, et al.,  
C.A. 03-75 Erie

Dear Clerk:

Please file the within Resubmitted Notice of Appeal in the interest of the above case with Affidavit and Certificate of Service attached. All Parties of Record have been served accordingly.

Thank You for Your attention.

Very truly yours,

  
Eric J. Lyons  
50 Overlook Dr., Ex 127  
LaBelle, PA 15450

cc: Parties of Record